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14 STATE OF CALIFORNIA
15 STATE WATER RESOURCES CONTROL BOARD

16 In the Matter of the Petition of NRDC and) PETITION FOR REVIEW OF SANTA
17 Orange County Coastkeeper for Review of) ANA REGIONAL WATER QUALITY
18 Action by the California Regional Water Quality) CONTROL BOARD APPROVAL OF
19 Control Board, Santa Ana Region, and by its) WATER QUALITY MANAGEMENT
20 Executive Officer, in Approving the Water) PLAN AND TECHNICAL
21 Quality Management Plan and Technical) GUIDANCE DOCUMENT
22 Guidance Document to Implement the) PURSUANT TO ORDER NO. R8-
23 Requirements of the County of Orange Areawide) 2009-0030,
24 Urban Storm Water Runoff Permit, Order No.) NPDES NO. CAS618030
25 R8-2009-0030, NPDES No. CAS618030)

26 Pursuant to Section 13320 of the California Water Code and Section 2050 of Title 23 of the
27 California Code of Regulations, the Natural Resources Defense Council (“NRDC”) and Orange
28 County Coastkeeper (“Coastkeeper”) (collectively, “Petitioners”) hereby supplement our
previously filed petition (SWRCB/OCC File A-2169) with the State Water Resources Control
Board (“State Board”). In that petition, we requested that the State Water Resources Control
Board (“State Board”) review the final decision of the Executive Officer of the California Regional
Water Quality Control Board for the Santa Ana Region (“Regional Board”) to approve the Water
Quality Management Plan (“WQMP”) and Technical Guidance Document and related appendices

1 (“TGD”). The WQMP and TGD are intended to implement obligations established by Orange
2 County’s areawide urban storm water runoff permit, Order No. R8-2009-0030, NPDES No.
3 CAS618030 (“Permit”). The Regional Board’s Executive Officer issued a final approval of the
4 WQMP and TGD on May 19, 2011. Simultaneously with the submission of our petition to the
5 State Board, we requested that the Regional Board hold a public hearing to reconsider the
6 Executive Officer’s approval of the WQMP and TGD no later than August 1, 2011. We received
7 no response from the Regional Board by this date, and thus we are supplementing our original
8 petition to challenge this further failure to act by the Regional Board.

9 As described in the petition that we are hereby supplementing (SWRCB/OCC File A-
10 2169), the Permit, Order No. R8-2009-0030, was adopted on May 22, 2009, and regulates storm
11 water discharges from municipal separate storm sewer systems (“MS4s”) and other designated
12 storm water discharges within a defined portion of Orange County. The County of Orange is the
13 principal permittee and the Orange County Flood Control District as well as the incorporated cities
14 of Orange County within the Santa Ana Region are co-permittees. The Permit covers
15 approximately 789 square miles, in 5 watersheds, and includes unincorporated areas and 26 cities.
16 The County’s systems include an estimated 400 miles of storm drain systems.

17 One of the Permit’s provisions, section XII.A.2., requires the principal permittee and co-
18 permittees to “develop a guidance document for the preparation of conceptual or preliminary
19 WQMPs to more effectively ensure that water quality protection, including LID principles, is
20 considered in the earliest phases of a project.” Section XII.E.1. further requires the principal
21 permittee and co-permittees to “develop technically-based feasibility criteria for project evaluation
22 to determine the feasibility of implementing LID BMPs.”

23
24 1. NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS OF THE
25 PETITIONERS:

26 Natural Resources Defense Council, Inc.
27 1314 Second Street
28 Santa Monica, California 90401
Attention: Noah Garrison, Esq. (ngarrison@nrdc.org)
(310) 434-2300

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Orange County Coastkeeper
3151 Airway Ave., Suite F-110
Costa Mesa, CA 92626
Attention: Colin Kelly, Esq. (colin@coastkeeper.org)
(714) 850-1965

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

NRDC and Coastkeeper (“Petitioners”) seek review of the Regional Board Executive Officer’s May 19, 2011 approval of the WQMP and TGD, as well as the failure of the Regional Board to hold a public hearing to reconsider the approval of these documents. We attached to our June 17, 2011 petition a copy of the Executive Officer’s Approval Letter, a copy of an Errata Sheet for the WQMP and TGD, a copy of the WQMP, and a copy of the TGD. We have attached to this supplemental petition (Exhibit A) a copy of a letter from NRDC and Coastkeeper to the Regional Board requesting that the Regional Board hold a hearing to review and reverse (or add conditions to) the Executive Officer’s approval. We previously requested that the State Board hold our petition in abeyance while we attempt to resolve our concerns through discussion with the Regional Board. We wish to continue to hold our petition in abeyance at this time.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

August 1, 2011.

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

In approving the WQMP and TGD, the Executive Officer failed to assure that they implemented relevant conditions contained in the Permit or requirements of the Clean Water Act, and in so doing, the Executive Officer failed to act in accordance with relevant governing law,

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1 acted arbitrarily and capriciously, without substantial evidence, and without adequate findings.

2 Specifically, but without limitation:

- 3 A. The Regional Board and/or the Executive Officer failed to ensure that the
4 WQMP and TGD, which implement critical elements of the Permit, satisfy
5 the Clean Water Act’s mandate to require “controls to reduce the discharge
6 of pollutants to the maximum extent practicable.” 33 U.S.C. §
7 1342(p)(3)(B)(iii); 40 C.F.R. § 122.26(d)(2)(iv).
- 8 B. The Regional Board and/or the Executive Officer failed to ensure that the
9 WQMP and TGD properly implement Permit section XII.A.2., which
10 requires the principal permittee and co-permittees to “develop a guidance
11 document for the preparation of conceptual or preliminary WQMPs to more
12 effectively ensure that water quality protection, including LID principles, is
13 considered in the earliest phases of a project.”
- 14 C. The Regional Board and/or the Executive Officer failed to ensure that the
15 WQMP and TGD properly implement Permit section XII.E.1., which
16 requires the principal permittee and co-permittees to “develop technically-
17 based feasibility criteria for project evaluation to determine the feasibility of
18 implementing LID BMPs.”
- 19 D. The Regional Board and/or the Executive Officer acted without adequate
20 findings and without substantial evidence in the record to support approval
21 of the WQMP and TGD. See, *Topanga Assn. for a Scenic Community v.*
22 *County of Los Angeles* (1974) 11 Cal.3d 506, 515; Cal. Code Civ. Proc. §
23 1094.5.
- 24 E. The Regional Board and/or the Executive Officer otherwise failed to require
25 that projects implement technically feasible and superior storm water
26 management BMPs onsite in all scenarios and to require that equivalent
27 performance be guaranteed through alternative compliance measures
28 wherever onsite compliance is infeasible.

- 1 F. The Regional Board and/or the Executive Officer improperly approved
- 2 provisions which allow for the use of biotreatment or biofiltration practices
- 3 to substitute for feasible and superior storm water management BMPs.
- 4 G. The Regional Board and/or the Executive Officer acted without authority to
- 5 approve the WQMP and TGD, which set forth material obligations and,
- 6 therefore, should have been subjected to Regional Board review.
- 7 H. The Regional Board and/or the Executive Officer failed to respond to
- 8 factually and legally specific comments from public interest organizations
- 9 concerning the significant matters at issue.

10
11 5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED:

12 Petitioners are non-profit, environmental organizations that have a direct interest in
13 protecting, *inter alia*, the quality of Orange County’s inland and coastal waters. NRDC represents
14 approximately 100,000 members and activists in California, approximately 6,000 of whom reside
15 in Orange County. Orange County Coastkeeper is a non-profit organization dedicated to
16 preserving all of Orange County’s water bodies and restoring them to healthy, fully functioning
17 systems that will protect recreational uses and aquatic life. Petitioners’ members are aggrieved by
18 the Permit’s inadequacy to control polluted urban runoff or support the beneficial uses of the
19 receiving waters in accordance with the Clean Water Act. In particular, Petitioners’ members
20 directly benefit from Orange County waters in the form of recreational swimming, surfing,
21 photography, birdwatching, and boating.

22 The Regional Board’s failure to adequately control urban storm water runoff through the
23 Permit, in the first instance,¹ and now through the WQMP and TGD, has enormous consequences
24 for the region and its residents. Urban storm water runoff is one of the most significant sources of
25 pollution in coastal and other receiving waters of the United States, and it is a particularly severe

26
27 ¹ In 2009, NRDC filed an appeal with the State Board for review of the Regional Board’s adoption
28 of the Permit.

1 problem in Orange County. Pollutants in storm water runoff adversely impact aquatic animals and
2 plant life in receiving waters and can cause serious human health impacts. Orange County's water
3 quality has worsened in the last two decades, and monitoring data show that urban runoff is a
4 primary cause of water quality impairment in the region.

5 Urban development increases impervious land cover and exacerbates problems associated
6 with storm water volume, rate, and pollutant loading. Consequently, Orange County's rapid rate
7 of urbanization and persistent water quality problems demand that the most effective storm water
8 management tools be required immediately. Scientific studies submitted to the Regional Board
9 during the permitting process demonstrate that low-impact development ("LID") practices that
10 retain runoff on-site are the most effective tools for controlling storm water runoff volume and
11 pollutant loading. While the Permit fails to require adequate controls for new and re-development,
12 the WQMP and TGD make matters worse by failing to implement the controls that are required by
13 the Permit. All of these documented facts demonstrate the considerable negative impact on
14 Petitioners' members and the environment that continues today as a result of the Regional Board
15 Executive Officer's approval of the WQMP and TGD.

16
17 6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH
18 PETITIONER REQUESTS:

19 Petitioners seek an Order by the State Board that:

20 Overturns the Regional Board Executive Officer's approval of the WQMP and
21 TGD; and,

22 Remands the matter to the Regional Board with specific direction to the Regional
23 Board to remedy each of the violations of law as described herein.

24 7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES
25 RAISED IN THE PETITION:

26 See Section 4, above. Petitioners request that this Petition be held in abeyance, and reserve
27 the right to supplement the legal arguments and authorities in support of this Petition.

28 ///

1 8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE
2 REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER:

3 A true and correct copy of this petition was mailed via First Class mail on August 29, 2011
4 to the Regional Board and to the Principal Permittees.

5
6 9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED IN
7 THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN
8 EXPLANATION OF WHY THE PETITIONER WAS NOT REQUIRED OR WAS
9 UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR OBJECTIONS BEFORE
10 THE REGIONAL BOARD:

11 All of the substantive issues and objections raised herein were presented to the Executive
12 Officer while the WQMP and TGD were under consideration. NRDC submitted written comments
13 to the Regional Board on April 22, 2011. The letter contained as attachments, copies of written
14 comments concerning drafts of the WQMP and TGD submitted by the Petitioners to the co-
15 permittees on: February 25, 2009; January 22, 2010; May 4, 2010; and, March 1, 2011.
16 Coastkeeper submitted written comments to the Regional Board under separate cover on April 21,
17 2011. Petitioners additionally provided oral testimony concerning the WQMP and TGD at a
18 Regional Board hearing on April 22, 2011. Petitioners previously submitted written comments on
19 October 14, 2010, and provided oral testimony at the Regional Board hearing on October 14, 2010,
20 in opposition to the Regional Board's decision to grant an extension of time for the permittees to
21 submit the WQMP and TGD.

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Respectfully submitted via electronic mail and Federal Express,

Dated: August 29, 2011

NATURAL RESOURCES DEFENSE
COUNCIL, INC.



Noah Garrison
Counsel for the Natural Resources Defense
Council, Inc.

Dated: August 29, 2011

ORANGE COUNTY COASTKEEPER



Colin Kelly
Counsel for Orange County Coastkeeper

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action. My business address is: 1314 Second Street, Santa Monica,
4 California 90401.

5 On August 29, 2011 I served the within document described as **PETITION FOR**
6 **REVIEW OF SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD**
7 **APPROVAL OF WATER QUALITY MANAGEMENT PLAN AND TECHNICAL**
8 **GUIDANCE DOCUMENT PURSUANT TO ORDER NO. R8-2009-0030, NPDES NO.**
9 **CAS618030** on the interested parties in said action by placing a true copy thereof in the United
10 States mail enclosed in a sealed envelope with postage prepaid, addressed as follows:

11 Mary Anne Skorpanich
12 Manager, OC Watersheds Program
13 Orange County Department of Public Works
14 2301 North Glassell Street
15 Orange, CA 92865
16 maryanne.skorpanich@ocpw.ocgov.com

Kurt Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348
kberchtold@waterboards.ca.gov

17 Kevin Onuma
18 Manager, Orange County Flood Control Division
19 Orange County Dept. of Public Works
20 OC Flood Control Division, 7th Floor
21 300 North Flower Street
22 Santa Ana, CA 92703-5000
23 kevin.onuma@ocpw.ocgov.com

Bill Campbell
Chair, Orange County Board of Supervisors
10 Civic Center Plaza
Santa Ana, CA 92701
bill.campbell@ocgov.com

24 I am "readily familiar" with the firm's practice of collection and processing
25 correspondence for mailing. It is deposited with U.S. postal service on that same day in the
26 ordinary course of business. I am aware that on motion of party served, service is presumed
27 invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for
28 mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on August 29, 2011, at Santa Monica, California.



Anna Kheyfets



ORANGE COUNTY
COASTKEEPER
EDUCATION / ADVOCACY / RESTORATION / ENFORCEMENT

June 17, 2011

Via electronic mail and U.S. mail

Chair Beswick and Members of the Board
California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Re: Request for Board Hearing Regarding Executive Officer's May 19, 2011 Approval of WQMP and TGD under the Orange County Areawide Storm Urban Water Runoff Permit, Order No. R8-2009-0030, NPDES No. CAS618030.

Dear Chair Beswick and Members of the Board:

On May 19, 2011, the Executive Officer approved the Water Quality Management Plan ("WQMP") and technical guidance document and related appendices ("TGD") submitted by the co-permittees to the Orange County areawide urban storm water runoff permit, Order No. R8-2009-0030, NPDES No. CAS618030 ("Permit") in order to meet the requirements of Permit Sections XII.A.2. and XII.E.1. For the reasons described below, we respectfully request that the Regional Board hold a hearing and review and overturn (or add conditions to) the Executive Officer's approval, since it is inconsistent with both the terms of the Permit and applicable law.

The Natural Resources Defense Council ("NRDC") and Orange County Coastkeeper ("Coastkeeper") make this request after participating extensively in the 2008-09 Orange County MS4 permitting process and after commenting extensively to the Orange County technical advisory group ("TAG") on multiple draft iterations of the WQMP and TGD.¹ Both before and after Permit adoption, NRDC and Coastkeeper have

¹ NRDC submitted written comments to the Regional Board on April 22, 2011. The letter contained as attachments copies of written comments submitted by NRDC and Coastkeeper to the co-permittees concerning drafts of the WQMP and TGD on: February 25, 2009; January 22, 2010; May 4, 2010; and, March 1, 2011. Coastkeeper submitted written comments to the Regional Board under separate cover on April 21, 2011. NRDC

consistently raised concerns about, among other issues: proposed WQMP and TGD standards for use of biotreatment or biofiltration practices and use of a “criterion” allowing for feasible on-site retention measures to be bypassed in favor of biotreatment; the use of regional and sub-regional LID BMPs; and, a lack of clear standards for the implementation of low impact development (“LID”) practices overall. We have focused significant attention over the last two years on the WQMP and TGD, and the development provisions they implement, because they are particularly critical for addressing the root causes of stormwater pollution. As the U.S. EPA has noted:

Most stormwater runoff is the result of the man-made hydrologic modifications that normally accompany development. The addition of impervious surfaces, soil compaction, and tree and vegetation removal result in alterations to the movement of water through the environment. As interception, evapotranspiration, and infiltration are reduced and precipitation is converted to overland flow, these modifications affect not only the characteristics of the developed site but also the watershed in which the development is located. Stormwater has been identified as one of the leading sources of pollution for all waterbody types in the United States. Furthermore, the impacts of stormwater pollution are not static; they usually increase with more development and urbanization.²

The Executive Officer approved the WQMP and TGD on May 19, 2011 over our written and, at hearing, verbal objections. We have previously noted that the WQMP and TGD are significantly flawed because they do not implement the terms of the overlying Permit or of the Clean Water Act’s maximum extent practicable (“MEP”) standard. As you may know, NRDC and Coastkeeper appealed the Permit itself in 2009. That appeal is presently in abeyance at the State Water Resources Control Board, a procedure we selected because of our hope that the WQMP and TGD drafting process could, notwithstanding the Permit’s problems with respect to its low impact development (“LID”) requirements from our perspective, result in a product minimally adequate to address water pollution in Orange County. The WQMP and TGD drafting process, however, has not resolved our concerns—indeed, it has done just the opposite. By compounding the problem of inadequate controls set forth in the Permit through their failure to properly implement those conditions that the Regional Board did include, the WQMP and TGD make matters worse.

and Coastkeeper additionally provided oral testimony concerning the WQMP and TGD at the Regional Board hearing on April 22, 2011. NRDC and Coastkeeper previously submitted written comments to the Regional Board on October 14, 2010 and provided oral testimony at the Regional Board hearing on October 29, 2010 in opposition to the Regional Board’s decision to grant an extension of time for the permittees to submit the WQMP and TGD.

² U.S. Environmental Protection Agency (December 2007) *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices*, at v.

For these reasons, we ask that the Regional Board intervene to review the Executive Officer's approval and set appropriate conditions so that the WQMP and TGD reflect those requirements that are found in the Permit and under the Clean Water Act's MEP standard. In order to provide an opportunity for the Regional Board to review our request, and hopefully to order corrections adequate to meet legal requirements, we will request that the State Board continue to hold our 2009 Permit appeal in abeyance. We will also continue to work with Regional Board staff to address the issues we have raised above. However, we respectfully request that the Regional Board grant our request to hold a hearing to review this matter by August 1, 2011. Failure to respond by August 1, 2011 will be considered a "failure to act" under Cal. Water Code section 13320(a) for purposes of an appeal to the State Board regarding the matter of the WQMP and TGD.³

We regret that two years after the Permit was issued, and more than 6 months after the WQMP and TGD were originally due, Orange County finds itself without the benefit of an effective, adequate LID regulatory program. We sincerely hope that the Regional Board will assert its authority and remedy this situation. We continue to be interested in working with the County and your staff to address our concerns.

Sincerely,



Natural Resources Defense Council



Colin Kelly
Orange County Coastkeeper

cc: Mary Anne Skorpanich, OC Watersheds Program
Kurt Berchtold, Executive Officer

³ In order to assure that under any view of the Executive Officer's actions we have a remedial avenue, NRDC and Coastkeeper have separately filed a protective appeal of the May 19, 2011 approval with the State Water Resources Control Board. We believe that Regional Board review of the May 19, 2011 approval is appropriate in the first instance and potentially more efficient for all parties. Therefore, we have asked that the State Water Board place our second appeal of matters related to Regional Board Order No. R8-2009-0030 in abeyance at this time. Once the Regional Board has acted on our request to review the May 19, 2011 approval of the WQMP and TGD, we will determine whether to proceed with our 2009 appeal of the Permit itself and the related May 19, 2011 approvals.